

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO.458 OF 2006

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UTV Software Communication

Limited & Anr.

...Petitioners

v/s.

Avatar Sigh Kochhar & Anr.

...Respondents

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Mr.Gaurav Joshi i/b Thakore Jariwala & Associates
for the Petitioners.

Mr.P.D.Jadhav for the Respondents.

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CORAM: D.K.DESHMUKH, J.

DATED: 20TH DECEMBER, 2006

P.C.:

1. This Petition is filed under Section 9 of the Arbitration Act for interim relief. There is an agreement between the parties dated 24th October, 2005. The Petitioner is the producer of a movie called "Rang De Basanti". The agreement between the parties with the Respondent was to distribute the movie. There was payment made by the Respondent to the Petitioner for getting right to distribute the movie. Clause 5.1.5 of the agreement relates to sharing of Over Flow between the Producer and the Distributor. According to the Petitioner he became entitled to Over Flow because the movie was doing very well, and therefore he asked the Respondent to produce the accounts to show as to how much is the total amount of Over Flow and what are the shares of the parties. But the accounts were not produced by the Respondents. Ultimately, the Petitioner terminated the agreement by letter dated 31st May, 2006. By letter dated 1st June, 2006 the Respondent informed the Petitioner that they have completely stopped the exploitation of the above movie entirely.

The Respondent also called upon the Petitioner to depute his representative for settlement of the account. But the settlement of account never took place. According to the Petitioner, the Petitioner has to receive more than Rs.1.5 crore from the Respondent. According to the Petitioner, the Respondent is likely to dispose of his property in order to defeat the award that may be made in favour of the Petitioner.

2. The Respondent has been served. Despite granting repeated adjournment, the Respondent has not filed any reply disputing averments made in the petition. The only submission made by the learned counsel appearing for the Respondent is that the parties entered into agreement dated 21-1-2006, copy of which is at Exh.I. According to the Respondent the agreement at Exh.I substitutes the agreement at Exh.A. There is an arbitration clause in the agreement at Exh.I. The arbitration clause in that agreement was invoked by the Respondent and the complaint was made to the Association which is the arbitrator according to that agreement, but the Association which is the Arbitrator rejected the complaint filed by the Respondent and therefore,

according to the Respondent challenging that order he has filed the petition under Section 9 before the Delhi High Court. According to the Respondent, because petition has been filed in Delhi High court, this court should not entertain this petition.

3. Therefore, the first question that is to be considered is whether the agreement at Exh.I can be said to be a substitution of the agreement at Exh.A. Perusal of the agreement at Exh.A shows that that agreement was entered into between the Petitioner and the Respondent for distribution of the movie. The terms and conditions governing rights of the parties are contained in detail in that agreement. Perusal of the agreement at Exh.I shows that that agreement was entered into so that the movie could be registered with the Distributors Association. The agreement at Exh.I was the consequence of the agreement at Exh.A and not the substitute of the agreement at Exh.A. Because the parties had entered into the Distribution Agreement at Exh.A for actually distributing the movie, they have to register it with the Distributors Association and therefore they filled in the Form which is at Exh.A. Therefore, prima facie it is clear that the agreement at Exh.I

cannot be said to be a substitute of the agreement at Exh.A. Even assuming that the agreement at Exh.I is the substitution of the agreement at Exh.A, then also in my opinion, this court cannot decline to entertain this petition. The arbitration clause contained in that agreement, it appears, was invoked by the Respondent and the complaint was made to the arbitral tribunal under that agreement. The arbitral tribunal, however, returned the complaint along with the cheque which was submitted by the Respondent because the complaint was not found to be proper by the arbitral tribunal. He was requested to file a proper complaint in the matter. Now, under the provisions of the Arbitration Act this order of the arbitral tribunal could not have even challenged by filing the petition under Section 9 in court. It is, therefore, obvious that the Respondent has filed the petition under Section 9 before the Delhi High Court challenging the communication from the arbitral tribunal only to stall the Petitioner from moving any other court.

4. I have already held above that the agreement at Exh.I cannot be termed as substitution of the agreement at Exh.A. In any case, it is nobody's case

that because the parties entered into agreement at Exh.I, the agreement at Exh.A was cancelled, there is no law prohibiting the parties from entering into two agreements in relation to a subject matter. Perusal of the provisions of Section 42 of the Arbitration & Conciliation Act shows that provisions operate in relation to an application made under Part-I in respect of an arbitration agreement. Therefore, even assuming everything in favour of the Respondent, an application under Section 9 assuming it to be maintainable before the Delhi High Court is made in relation to the arbitration agreement contained in the document at Exh.I, therefore, that application will not oust the jurisdiction of this court because of the provisions of Section 42 of the Arbitration Act to entertain this petition. Therefore, looking at the matter from any point of view, it cannot be said that the present application is not maintainable before this court.

5. Now, so far as the merits of the matter are concerned, the Petitioner firstly is praying for appointment of the Receiver to receive the prints of the movie. Perusal of the letter of the Respondent dated 1-6-2006 shows that he has stopped exploiting

the movie. The agreement between the parties has been terminated by the letter dated 31st May, 2006 and that termination has been accepted by the Respondent by stopping the exploitation of the movie. Therefore, it is clear from the letter dated 31st May, 2006 of the Petitioner and the letter dated 1-6-2006 of the Respondent that there is no Distributorship agreement between the parties, which can be said to be in existence. In my opinion, therefore, the Respondent has no authority to hold on the prints of the movie and therefore, the Petitioner is entitled to have the Receiver appointed to hold the prints of the movie. The Petitioner in the petition has made categorical averment that an amount to the tune of Rs.1.5 crore is recoverable by the Petitioner from the Respondent. The Petitioner has also stated on oath that the Respondent is trying to dispose of the property. This averment made in the petition has not been denied by the Respondent by filing an affidavit. Therefore, the averment made in the petition has to be accepted at its face value, and therefore, in my opinion, the Petitioner is entitled to an order for attachment before judgment of the property of the Respondent.

6. The learned Counsel appearing for the Petitioner stated that attachment of one of the properties listed in the document at Exh.M would serve the purpose. According to him the property listed at Serial No.2 would be sufficient.

7. In the result, therefore, this petition is granted in terms of prayer clause (d). The Petition is also granted in terms of prayer clause a(ii), restricted to the property at Serial No.2 of Exh.M, i.e. Office Premises situated at 1681/35, Mangal Market, 2nd floor, Bhagirati Palace, Chandni Chowk, Delhi-110 006.

8. Petition disposed of. The Respondent is directed to pay costs of this petition to the Petitioner as incurred by the Petitioner.

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